IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5618 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JITENDRAKUMAR ASHWINBHAI BRAHMBHATT

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5618 of 2002

MR KL DAVE for Petitioner No. 1

MR SM MEHTA, Ld. AGP for Respondent No. 1-3

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 20/01/2003

ORAL JUDGEMENT

1. With the consent of the parties the matter is taken up for final hearing today.

2. The father of the petitioner was working as a Constable and he expired on 9-5-1995. Somewhere in July, 1999, the petitioner applied for compassionate appointment, since there are four members in the family of the deceased employee. The petitioner was denied the consideration for compassionate appointment on the ground that the income of the family of the deceased exceeds Rs.2,500/= per month. The petitioner was accordingly communicated about the same as per the letter dated 18-6-2001, copy whereof is produced at Annexure "A". Under these circumstances the present petition.

3. Heard Mr.Dave for the petitioner and Mr.Mehta, learned AGP for the respondents. It appears that the petitioner was to be considered for the post on clerk on the ground of compassionate appointment and the proposal was also forwarded to the State Government, but since the income of the family of the deceased employee exceeds Rs.2,500/=, the application is rejected. The perusal of the communication dated 18-6-2001 shows that out of the total income of the family of the petitioner, which is of Rs.2,748/=, amount of pension is Rs.1,690/= plus D.A. of Rs.541/= and other allowance of Rs.100/= and the agriculture income of the family is Rs.417/= per month and, therefore, if the amount of family pension is excluded from the total amount of Rs.2,748/=, the income of the family would be below Rs.2,500/=.

4. The contention raised on behalf of the petitioner is that this Court (Coram: M.S.Shah, J.), as per the judgement dated 7-10-2001 in SCA No.11197/2001, has held that while calculating the limit fixed by the Government for eligibility of compassionate appointment so far as the income is concerned, the income of the family pension is to be excluded and, therefore, it has been submitted that the denial of compassionate appointment on the ground that the income exceeds Rs.2,500/= is illegal and deserves to be quashed and set aside.

5. I find considerable substance in the contention raised on behalf of the petitioner, because, in my view, the issued is covered by the judgement dated 7-10-2002 passed by the coordinate Bench of this Court in SCA No.11197/2001 in the case of "Gajendrasinh Kalyansinh Rehvar v. State of Gujarat & Ors." and, therefore, no elaborate discussion is required and in that view of the matter, while considering the limit prescribed for income of the family, the income of the family pension of the deceased is to be excluded. If such amount of family pension as mentioned in the communication dated 18-6-2001

is excluded from the total income of the family, the consequence would be that the income of the family of the deceased employee would be only Rs.417/= per month. Even as per the communication dated 18-6-2001, it will be below the amount of Rs.2,500/= and, therefore, the petitioner cannot be denied compassionate appointment on the ground that the income exceeds the prescribed limit of Rs.2,500/= per month.

6. In view of the above discussion, the decision dated 18-6-2001 communicated to the petitioner at Annexure "A" is quashed and set aside and the State Government and other concerned respondents are directed to consider the case of the petitioner for compassionate appointment on the ground that the income of the family of the deceased employee is less than Rs.2,500/= per month and shall pass appropriate orders in accordance with law, preferably within a period of three months from the date of receipt of the writ of this Court.

7. The petition is allowed to the aforesaid extent. Rule is made absolute accordingly. Considering the facts and circumstances of the case, there shall be no order as to costs. Direct service is permitted.

20-1-2003 (Jayant Patel, J.)

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